

**UNITED STATES BANKRUPTCY COURT  
for the  
DISTRICT OF MASSACHUSETTS**

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In Re:

MARIA ORTIZ,

Debtor

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\* Chapter 13  
\* No. 09-22059-WCH  
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**DECISION ON CHAPTER 13 TRUSTEE'S  
OBJECTION TO CONFIRMATION OF PLAN**

The Chapter 13 Trustee (the "Trustee") has objected to the confirmation of the plan proposed by debtor Maria Ortiz ("Debtor") on two grounds: first, that there is a requirement for a minimum payment in a chapter 13 plan; and second, that Debtor's plan was not proposed in good faith. After argument, I took the matter under advisement. For the reasons set forth below, I will enter an order sustaining the Trustee's objection.

*Background*

On March 28, 2003, Debtor filed a petition under chapter 7.<sup>1</sup> She received her discharge in ordinary course on January 28, 2004. On December 13, 2009, Debtor filed her second bankruptcy, the present case, under Chapter 13.<sup>2</sup>

Debtor's schedules indicate ownership of personal property valued at \$3,375.04, all

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<sup>1</sup> Case No. 03-12553.

<sup>2</sup> She was not eligible for a chapter 7 discharge since her prior case had been commenced less than eight years prior to the present filing. 11 U.S.C. § 727(a)(8).

of which was claimed as exempt, and liabilities consisting of \$11,856.94 in unsecured nonpriority claims. Her income consists of \$788.39 in monthly social security payments and \$87.00 in food stamps, against which she reported expenses of \$861.00, leaving monthly net income of \$14.39. Because her annualized current monthly income was \$1,044.00, far less than the then-applicable Massachusetts median family income of \$54,842.00 for a one-earner household, her applicable commitment period for a chapter 13 plan is 3 years.<sup>3</sup>

Debtor's chapter 13 plan proposed a 6.55% dividend to her creditors, based upon a monthly payment of \$14.00. This percentage is incorrect (although the Trustee did not raise the point) as Debtor's proposed monthly payment of \$14.00 would only pay \$504.00 into the plan over 3 years. Netting out the Trustee's fee (calculated at 10%) of \$50.40<sup>4</sup> leaves only \$453.60 for creditors, which would be \$12.60 a month, which, under the standard plan language, would be rounded to \$13.00. The correct percentage is therefore only 3.83%.

The plan certainly cannot be confirmed with this problem existing, and I assume that the Trustee will file a further objection to confirmation on that basis unless an appropriate amendment is offered.

*The minimum fee issue*

The Trustee first contends that a chapter 13 plan must provide a large enough monthly payment to assure her of \$5.00 per month in fees. To be precise, she says:

4. 11 U.S.C. § 330(c) states that unless the Court orders otherwise, in a case under chapter 12 or 13 of this title the compensation paid to the

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<sup>3</sup> So claimed on Form 22C, Line 17.

<sup>4</sup> Or \$1.40 a month.

Trustee serving in the case shall not be less than \$5.00 per month from a distribution under the plan during the administration of the plan.

5. The applicable commitment period in this case is 36 months. As such, in order for the Trustee to receive a minimum commission of \$5.00 per month, the plan payments must be a minimum of \$50.00 per month for the term of 36 months.

6. The Trustee therefore asserts that the Plan cannot be confirmed as it fails to comply with the requirements of 11 U.S.C. § 330(c).<sup>5</sup>

This argument ignores the opening phrase of the statute — “Unless the court orders otherwise.” The Trustee would have it that I cannot order otherwise, and hence I cannot confirm a plan which denies her \$5.00 a month. This reading is contrary to the express language of the statute and must fail. However, to seek a court order otherwise, one must move the court; Debtor has not done so. Absent such an order, the Trustee’s objection is well taken and must be sustained on that basis.<sup>6</sup>



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William C. Hillman  
United States Bankruptcy Judge

Dated: 5/12/2010

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<sup>5</sup> Trustee’s Objection ¶¶ 4-6.

<sup>6</sup>Of course, this simply postpones consideration of the grounds for the granting of such an order to another day, if such a motion is in fact filed.